

REMARKS

Support for the amendments can be found in the specification at least at page 1 and page 9.

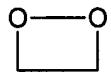
No new matter has been added and entry is respectfully requested.

First, Applicants gratefully acknowledge the courtesies extended by Examiner Riley in granting a personal interview on July 5, 2005. During that interview, applicant's representative proposed amending the claims to recite a chemiluminescent *dioxetane* precursor and pointed out the failure of the Dattagupta reference to teach dioxetane precursors.

Applicants also gratefully acknowledge the indication that Claim 20 is directed to allowable subject matter. As suggested in the Official Action, Claim 20 has been rewritten in independent form. Accordingly, it is respectfully submitted that Claim 20 is allowable. Finally, Applicants gratefully acknowledge the indication that the elected species appearing at the top of page 12 is also allowable (page 2, numbered paragraph 1 of the Official Action). Newly added Claim 25 is directed to this species. Accordingly, it is respectfully submitted that Claim 25 is also allowable.

Claims 7, 8, 11, 13, 14, 21, 23 and 24 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 4,794,073 to Dattagupta et al. (hereinafter referred to as "Dattagupta") in view of Eggers et al., *Biotechniques*, Vol. 17, No. 3, 1994, pg. 516, (1994) (hereinafter referred to as "Eggers") and further in view of U.S. Patent No. 5,672,514 to Tsuchiya et al. (hereinafter referred to as "Tsuchiya").

The Official Action is relying upon the disclosure in Dattagupta of a "chemiluminescence precursor" (column 2, lines 16-17 of Dattagupta). Claim 7, however, has been amended to recite a chemiluminescent *dioxetane* precursor. The dioxetane moiety has a structure as set forth below:



The Official Action has pointed to no teaching or suggestion in Dattagupta of a composition as set forth in Claim 7 comprising a chemiluminescent *dioxetane* precursor. Moreover, Dattagupta discloses 2,3-dihydro-1,4-phthalazinediones such as luminol and isoluminol as "chemiluminescence precursors" (column 8, lines 5-32 of Dattagupta). These compounds, which have a chemical structure as set forth in column 8, lines 10-17 of Dattagupta, are not dioxetane precursors {*i.e.*, compounds which can be converted (*e.g.*, via photooxidation) to a chemiluminescent dioxetane moiety}. Accordingly, is is respectfully submitted that Claim 7 is patentable over the cited references. Claims 8, 11, 13, 14, 21, 23 and 24 depend from Claim 7 and are therefore also patentable over the cited references for at least the reasons set forth above with respect to Claim 7. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

Withdrawn species Claims 9, 10, 12, 15-19, and 22 depend from generic Claim 7 which, as set forth above, is patentable over the cited references. Accordingly, it is respectfully requested that these claims are no longer properly withdrawn. MPEP §809.02(c). Allowance of Claims 9, 10, 12, 15-19, and 22 is therefore also respectfully requested.

Claims 7, 8, 11, 13, 21 and 23 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1 and 3 of U.S. Patent No. 5,800,999 in view of Lipschutz et al., *Biotechniques*, Vol. 19, No. 3, pp. 442-447 (1995) (hereinafter referred to as "Lipschutz").

Submitted herewith is a Terminal Disclaimer over U.S. Patent No. 5,800,999. As set forth in the Official Action, a timely filed terminal disclaimer in compliance with 37 CFR §1.321(c) may be

used to overcome a non-statutory double patenting rejection. Reconsideration and withdrawal of this rejection is respectfully requested.

CONCLUSION

Applicants submit that this application is in condition for allowance and therefore request favorable consideration. If any issues remain which the Examiner feels may be best resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact Applicants' counsel, Christopher W. Raimund, at (202) 326-0345.

Respectfully submitted,

MERCHANT & GOULD P.C.



Steven B. Kelber
Registration No. 30,073
Attorney of Record

Christopher W. Raimund
Registration No. 47,258

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Date

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PATENT TRADEMARK OFFICE

P.O. Box 2903
Minneapolis, MN 55402-0903
Telephone No.: (202) 326-0300
Facsimile No.: (202) 326-0778